REMARKS

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated June 12, 2008, the shortened statutory period for response set to expire on September 12, 2008. Accordingly, the response is timely.

In the event .... a Petition and Fee for Extension of time are included herewith.

I. Status of the Claims

Please amend claims 1, 2, 10, 12, 15, 16, 18, 19, 21 and 22 as indicated above. Please add new claim 23 as indicated above. New claim 23 does not add new matter and is supported by non-limiting examples in the specification. (See e.g., Fig. 5, where transfer of an ESO is to a Broker Dealer).

Claims 17 and 20 were previously cancelled without prejudice. Claims 1 – 16, 18, 19, 21, 22 and 23 are now pending in the application. Claims 1, 10, 15, 16, 18, 19, 21 and 22 are independent claims.

II. Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 2-4 and 12-14 under 35 U.S.C. § 112 as being indefinite with respect to the term prorating.

As discussed in the previous response, non-limiting examples of prorating are provided in the original specification. For example, at page 22, lines 8-10, the specification states: "If Employees decide to transfer more options than Broker Dealer 112 has hedged, then the final transfer can be prorated among the electing Employees. This serves to shift a part of the uncertainty risk to Employees 104."

In another example, beginning on page 23, line 19 through page 24, line 9, the original specification states:

> In the discussions above, prorating of the options transferred has been mentioned. There are different prorating embodiments that can be used. A simple percentage prorating technique can be used to allocate the transfer among all of the employees. In this technique, if 100 employees each with 10 options elect to transfer (1000 shares total) and Broker Dealer 112 is only able to hedge 800 shares, then each of the 100 employees will be able to transfer 8 of their options, with the remaining 2 options rolling over to the next day.
>
> In a first-in-first-sold (or first election for transfer first transferred) prorating technique, the earliest employees to make the transfer election will receive all of their options and those employees making later transfer elections are subject to prorating if necessary. In another example, using the same 100 employees each with 10 options, if Broker Dealer 112 is only able to hedge 800 shares, then the first 80 employees who made the election will be able to transfer all of their options, the last 20 employees who made the election will roll over to the next day.

Finally, at page 24, lines 19-20, the specification states: "prorating may be required if too many options are tendered during any batch."

Applicants respectfully submit that the term prorating is not particularly unusual and the original specification provided non-limiting examples of the term prorating in the context of the inventions, and that the basis for the rejection under § 112 was overcome. However, in the interest of advancing the claims to allowance, Applicants have amended claims 2 and 12 to state that prorating is by transfer of less than a tendered number of options. Applicants ask that the rejection be withdrawn.

III. Rejections under 35 U.S.C. § 101

The Examiner has rejected claims 1-16 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner states that under Office guidance, there is neither a particular apparatus, or a physical transformation in the claims.

Applicants respectfully submit that the Office guidance is not supported by the current state of the case law and further that cases presently on appeal will determine whether the Office guidance reflects the state of the law. However, in the interest of advancing the claims to

allowance, Applicants have amended independent claims 1, 10, 15 and 16 to expressly recite a computer system, which does constitute a particular apparatus. The amendment is made without prejudice to re-submission of method claims without any recited apparatus depending on the outcome of the current cases on appeal. Withdrawal of the rejection as to § 101 is requested.

IV. Rejections under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1 & 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,269,346 to Cristofich ("*Cristofich*") in view of Brenner et al. (Journal of Financial Economics 57 (2000)) ("*Brenner*"). Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cristofich* and *Brenner* in view of Peter Hoadley's Options Strategy Analysis Tools ("*Hoadley*"). Claims 11-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cristofich* in view of *Brenner, Hoadley*, and official notice. Claims 2-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cristofich* in view of *Brenner,* and official notice.

As explained in the prior response with respect to the rejection of claim 1, the Examiner states that *Cristofich* discloses transfer of employee stock options. Applicants respectfully disagree. Any transfer of employee stock options in *Cristofich* is in the context of either initial issue of the option to the employee (which is not a transfer) or exercise of the stock option.

Claim 1 as amended recites: a method for transfer of previously issued employee stock options without exercise of the stock options, the method performed at least partially by a computer system, and comprising, providing a decision period for transfer of employee stock options from employees holding the stock options to a first party without exercise of the stock options, the decision period having a first part, and a second part; providing a plurality of option

value prices during the first part of the decision period, the plurality of option values determined at least partially by the computer system; and determining a stock price corresponding to a particular one of the plurality of option value prices during the second part of the decision period.

It is clear from original claim 1, and claim 1 as it is now amended, that the method provides for transfer of previously issued employee stock options from the employee holding the options to a first party without exercise of the stock options. This is one of the central features of the presently claimed inventions and it is not found individually or in a combination of *Cristofich* or *Brenner*. For that reason, claim 1 is allowable over the cited references. Claims 2-9 depend directly or indirectly from claim 1 and therefore include all the limitations of claim 1. Because neither *Cristofich* nor *Brenner* disclose all the features of claim 1, they do not disclose all the features of dependent claims 2-9 and those claims are similarly allowable over the cited references. Claims 15, 16, 18, 19, 21 and 22 are rejected on the same grounds as claim 1, and withdrawal of those rejections is similarly respectfully requested.

Claim 10 as amended recites: a method for transfer of previously issued employee stock options without exercise of the stock options, the method performed at least partially by a computer system, and comprising, providing a plurality of transfer periods for transfer of employee stock options from employees holding the stock options to a first party without exercise of the stock options; providing a plurality of decision periods during each transfer period; providing an option value price during each decision period, the option value price determined at least partially by the computer system; and using an option pricing formula with the computer system to determine the option value price.

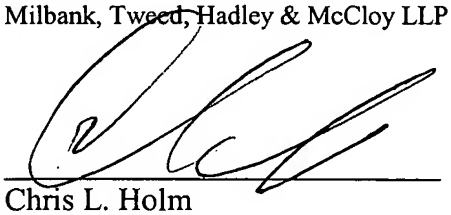
For claim 10, just as with claim 1, the Examiner relies on *Cristofich* for a disclosure of transferring employee stock options. However, as explained above with respect to

For claim 10, just as with claim 1, the Examiner relies on *Cristofich* for a disclosure of transferring employee stock options. However, as explained above with respect to claim 1, any transfer of employee stock options in *Cristofich* is either initial issue (which is not a transfer), or exercise. There is no disclosure in *Cristofich* of transfer of previously issued employee stock options from the employee holding the option to a first party without exercise. Because the cited references do not individually or in combination disclose or suggest all of the claimed features of claim 10, withdrawal of the rejection as to claim 10 and dependent claims 11-14 is respectfully requested.

V. Request for Reconsideration

Applicants respectfully submit that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

Respectfully submitted,
Milbank, Tweed, Hadley & McCloy LLP



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